FIXTURES — REMOVAL OF — ANNEXATION BY CONDITIONAL BUYER TO REALTY OF ANOTHER, SUBJECT TO A MORTGAGE. — A conditional buyer of steam boilers and radiators annexed them to the realty of another which was subject to a prior mortgage. The mortgagee, who was ignorant of the conditional sale, brought this suit of foreclosure. *Held*, that the boilers and radiators are subject to the mortgage. *Realty Associates* v. *Conrad Construction Co.*, 173 N. Y. Supp. 25.

When an owner of realty annexes thereto fixtures which he bought on a conditional sale, and then subsequently mortgages the land, the fixtures are held to be subject to the mortgage, either because a *bona fide* purchaser cuts off an equitable estate or because of a judicial dislike for secret liens. *Horn* v. *Clark Hardware Co.*, 54 Colo. 522, 131 Pac. 405; *Bank* v. *Wolf*, 114 Tenn. 255, 86 S. W. 310. *Contra*, *Falaenau* v. *Reliance Steam Foundry Co.*, 74 N. J. Eq. 325, 69 Atl. 1098; *Adams* v. *Interstate Building Association*, 119 Ala. 97, 24 So. 857. As to the rights of prior mortgagees, opinions differ. Some jurisdictions allow such mortgagees to treat the fixtures as subject to the mortgage, regardless of the possibilities of removal without impairing the realty. *Clary* v. *Owen*, 15 Gray (Mass.) 522; *Fuller-Warren Co.* v. *Harter*, 110 Wis. 80, 85 N. W. 698; *Tippett & Ward* v. *Barham*, 180 Fed. 76. Other states hold that the agreement between the vendor of fixtures and the mortgagor of the realty is valid against a prior mortgagee only if removal of the fixtures is possible without damaging the realty. *Blanchard* v. *Eureka Planing Mill Co.*, 58 Ore. 37, 113 Pac. 55; *Detroit Steel Cooperage Co.* v. *Sistersville Brewing Co.*, 233 U. S. 712. This seems the better view, since the mortgagee's security is not impaired. Though in the principal case the mortgagor was not the conditional buyer, yet as the annexation of chattels to the realty by one having no right, title, or interest in either, makes them part of the realty, and as in the principal case they could not be removed without impairing the mortgagee's security interest, the case seems well decided. See *Peck-Hammond* v. *School District*, 93 Ark. 77, 123 S. W. 771; *Goddard* v. *Bolster*, 6 Greenleaf (Me.) 427.

INSURANCE — CHANGE IN INTEREST, TITLE, AND POSSESSION — WHETHER SHERIFF'S SALE CONSTITUTES. — The plaintiff insured real property subject to a mortgage lien against loss by fire, the policy to be void for change in interest, title, or possession. Loss occurred after judgment of foreclosure and the sheriff's sale, but before the expiration of the statutory period allowed for redemption. *Held*, that the policy was not avoided by the foreclosure or sheriff's sale. *Collins* v. *Iowa Manufacturers' Ins. Co.*, 169 N. W. 199 (Iowa).

Hostility of the bench to forfeitures in insurance has polarized the decisions construing conditions as to changes in interest, title, and possession in favor of the insured. So a binding contract for the sale of land is not such a change of title as will avoid a policy. See 1 AMES, CASES IN EQUITY JURISDICTION, 242, note. The bent of the courts is evidenced by recoveries allowed for loss between the adjudication and appointment of trustees in bankruptcy. See 21 HARV. L. REV. 531. On the other hand change of the equitable ownership ought to be recognized as a change of interest. *Skinner* v. *Houghton*, 92 Md. 68; *Gibb* v. *Philadelphia Co.*, 59 Minn. 267. But see VANCE ON INSURANCE, § 161. This should be so not only in the ordinary contract for the sale of land, but also when a court of equity confirms a contract of sale made by a master, or where there is a sheriff's sale. See 13 HARV. L. REV. 223. See FREEMAN, LAW OF EXECUTION, 2 ed., § 326. In the latter situation equities may be cut off before the sheriff's deed is executed. See 11 HARV. L. REV. 131. But where statute allows a period for redemption following the sale, the equitable interest of a mortgagor or his purchaser would seem unaffected by the sale until the expiration of the prescribed period. See IOWA CODE, §§ 4044, 4045, 4289. See 2 POMEROY, §§ 1190, 1227, 1228. Accordingly the principal case

is supported by the great weight of decision. *Wood* v. *American Fire Ins. Co.*, 149 N. Y. 382, 44 N. E. 80; *Stephens* v. *Illinois Mutual Fire Ins. Co.*, 43 Ill. 327.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL STATUTE AGAINST SHIPPING LIQUOR INTO STATES WHICH PROHIBIT ITS MANUFACTURE AND SALE. — A federal statute prohibits the shipment of intoxicating liquor into states which prohibit its manufacture and sale (39 STAT. L. 1069). Defendant was convicted under this statute for carrying intoxicating liquor for his personal use from Kentucky into West Virginia, which prohibited the manufacture and sale of liquor but did not prohibit its importation for personal use. *Held*, that the statute was not unconstitutional. *United States* v. *Hill*, 39 Sup. Ct. Rep. 143.

The power of Congress to regulate interstate commerce is limited only by the constitution of the United States. *Hipolite Egg Co.* v. *United States*, 220 U. S. 45. It extends to absolute prohibition. *Lottery Case*, 188 U. S. 321. Means may be adopted for its exercise that have the quality of police regulations, even though the states have police power over the same subject within their boundaries. *Hoke* v. *United States*, 227 U. S. 308. The statute is therefore constitutional unless it involves such an unreasonable and arbitrary discrimination between states as to constitute a denial of due process of law. A statute prohibiting the sale of liquor to Indians for a limited time after they had lost the character of tribal Indians has been held a reasonable exercise of the power to regulate commerce with the Indian tribes. *Dick* v. *United States*, 208 U. S. 340. And likewise a statute prohibiting the sale of liquor in a portion of a state inhabited partially by tribal Indians. *Ex parte Webb*, 225 U. S. 663. A statute taxing corporations has been held not an arbitrary discrimination between classes of persons. *Corporation Tax Cases*, 220 U. S. 107. The principal case goes slightly further than these, as the statute goes beyond the state policy which is the basis for the distinction, but this basis is nevertheless a sound one, and on the whole the discrimination does not seem an unreasonable one.

LIBEL AND SLANDER — PRIVILEGED COMMUNICATIONS — ABUSE OF PRIVILEGE. — A bank depositor requesting blank checks received some with the name of an association faintly stamped above the line for signature. The depositor, oblivious to the stamp, signed and distributed the checks. The bank returned the checks to the payees, with "Forgery" written upon them, and an attached slip marked "Signature Incorrect." The depositor brought action for libel and slander against the bank. *Held*, that he may recover. *Schwartz* v. *Chatham & Phenix National Bank*, 172 N. Y. Supp. 762.

The charge "Forgery" is actionable *per se* as imputing an indictable offense. *Herzog* v. *Campbell*, 47 Neb. 370, 66 N. W. 424. A libellous publication reasonably impressing one as designating the plaintiff renders the defendant liable. *The King* v. *Clerk*, 1 Barn. 304. That the plaintiff is not named by the defendant is immaterial if intrinsic evidence makes apparent the allusion to him. *Van Ingen* v. *Mail & Express Pub. Co.* 156 N. Y. 376, 50 N. E. 979. Accusation of an illegal drawing by the plaintiff on the association's funds is reasonably to be inferred from the charge. Communications between banks and payees of checks drawn thereon, concerning their validity, are, on principle, privileged. *Christopher* v. *Akin*, 214 Mass. 332, 101 N. E. 971; *Rotholz* v. *Dunkle*, 53 N. J. L. 438, 22 Atl. 193. But a privilege exceeded is a privilege lost. *Payne* v. *Rouss*, 61 N. Y. Supp. 705; *Smith* v. *Smith*, 73 Mich. 445, 41 N. W. 499. In the absence of a privilege or where one is exceeded no malice need be shown. POLLOCK, TORTS, 7 ed., 600; 23 HARV. L. REV. 218. The charge "Forgery" in addition to the notification "Signature Incorrect," was